



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,332	08/14/2001	Ross A. Jeffery	1595-17/MBE	6683

38735 7590 11/06/2009

DIMOCK STRATTON LLP
20 QUEEN STREET WEST, 32nd FLOOR, BOX 102
TORONTO, ON M5H 3R3
CANADA

EXAMINER

SHEPARD, JUSTIN E

ART UNIT	PAPER NUMBER
----------	--------------

2424

MAIL DATE	DELIVERY MODE
-----------	---------------

11/06/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Response to Arguments

Applicant's arguments filed 9/21/09 have been fully considered but they are not persuasive.

Page 2, The PBS Article is not citable prior art section:

The applicant argues that the article does not provide an enabling disclosure of anything. The article teaches that video programming can be streamed over the public internet or a private intranet using Precept's video conferencing technology. It is the opinion of the examiner that when combined with Adams (which teaches that digital video is transmitted on demand over a cable network), one of ordinary skill in the art would recognize that video could be requested and received over the internet instead of over a cable network. The applicant's suggests that the article does not explain how the system would function and therefore there would not be enough information to create the system. The disclosure portions of United States Patents often gloss over high level functions. For example, a patent might disclose that a remote control could be used to control the system without detailing how the remote would work. It is the opinion of the examiner that one of ordinary skill in the art would know that remotes can use infrared or wireless radio frequencies and be able to incorporate the concept into further inventions. On the other hand, if the idea was so complex that there would be no way to construct the disclosed system without more information the applicant would be correct. For example, if the article stated that cold fusion was possible, this article could not be used to reject a patent application claiming successful cold fusion. In this case, streaming video over a computer network is not seen as being such a complex idea that

Art Unit: 2424

it would be beyond someone of ordinary skill in the art, especially when combined with a system that streams video over a cable network. Therefore the article is seen as enabling proper prior art.

Secondly, the applicant argues that as the article refers to something happening in the future, it can not be seen as a functional system and therefore cannot be used as prior art. There is nothing that states that a patented idea need be constructed, never mind a prior art idea be constructed for it to be used as prior art. If the inventor had disclosed his invention in a paper over a year before filing for the patent, the idea would not be patentable as it had been disclosed to the public over a year before filing. So without constructing anything, a published paper (just as in this case) could be used to reject a claim. Therefore the article is proper prior art.

Page 2, last section:

The applicant argues that the article does not teach any of the limitations that the examiner suggests. First the applicant argues that the article does not teach a user-selected channel. There are multiple ideas disclosed in the article such as training service videos, normally broadcasted television programs, and video-on-demand services (paragraph 7). It is the opinion of the examiner that the VOD service is a user selected channel. Also, an electronic programming guide is taught (paragraph 9), which allows for programming to be selected by the user. If there was only one channel built into the system there would be no need for an EPG, so the presence of an EPG teaches that more than one channel exists for the user to select.

The applicant argues that the system only distributes scheduled multi-casts and cites paragraph 6 as teaching this. The examiner agrees that this paragraph does teach that the system can be used to schedule video training, but the article also teaches traditional television broadcasting and VOD as has been shown above.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the system is a user-controlled unicast system and not a multicast system) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Page 3, last section:

The applicant argues that Adams does not teach a switching device for routing the channel selection in the form of an Internet protocol. The applicant then states that the cited portion of Adams (column 8, lines 7-12) only teaches sending and receiving control signals in the form of IP datagrams through the digital switch. The examiner agrees with the applicant's assessment of the cited portion, but disagrees with the interpretation of the claim. As interpreted by the examiner, this portion of the claim refers to routing the control signals from the users for selecting a channel and not routing the video data through the digital switch as argued by the applicant. Using the examiners reading of the claim limitation, Adams does teach the limitation. The examiner agrees that Adams does not route the video back through the digital switch,

Art Unit: 2424

and if that limitation was added into the claim, a further search would most likely be needed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin E. Shepard whose telephone number is (571) 272-5967. The examiner can normally be reached on 7:30-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-5967.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher Kelley/
Supervisory Patent Examiner, Art
Unit 2424

JS